

SERVICE DATE – JUNE 20, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1250 (Sub-No. 1X)

HC RAILROAD, LLC—ABANDONMENT EXEMPTION—IN RUSH COUNTY, IND.

Digest:¹ This decision allows HC Railroad, LLC to end its common carrier obligation to provide freight rail service over approximately 6.4 miles of rail line in Rush County, Ind.

Decided: June 15, 2017

By petition filed on March 14, 2017, HC Railroad, LLC (HC Railroad), seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 6.4 miles of rail line (the Line) extending from milepost 17.4 to milepost 23.8 in Rush County, Ind. The Line traverses U.S. Postal Zip Code 46173. HC Railroad also seeks an exemption from the provisions of 49 U.S.C. § 10904 (offer of financial assistance (OFA) procedures) and 49 U.S.C. § 10905 (public use conditions) as it intends to leave the track in place for continued access by its affiliate, Morristown Grain Company (Morristown), and to serve any hypothetical future industries by contract.

Notice of the exemption was served and published in the Federal Register on April 3, 2017 (82 Fed. Reg. 16,269). No comments in opposition to the proposed abandonment were filed. For the reasons discussed below, the Board will grant an exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions, but will deny the requested exemption from 49 U.S.C. § 10904, and deny as moot the requested exemption from 49 U.S.C. § 10905.

BACKGROUND

According to HC Railroad, immediately upon acquiring the Line from Honey Creek Railroad, LLC (Honey Creek)² in 2010, HC Railroad leased it to the only shipper on the Line,

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² HC R.R.—Acquis. & Operation Exemption—Honey Creek R.R., FD 35434 (STB served Oct. 28, 2010).

Morristown, an affiliate of HC Railroad.³ HC Railroad states it never conducted any operations—common carrier or otherwise—over the Line; thus, no common carrier traffic has moved over the Line in more than five years. In addition to acquiring the Line in 2010, HC Railroad also acquired from Honey Creek its rights to own and/or operate approximately 1,400 feet of private industrial track (Connecting Track) that it co-owned with CSX Transportation, Inc. (CSXT). HC Railroad submits that, between 2010 and 2015, CSXT placed and removed railcars shuttled by Morristown between its grain facility and the Connecting Track over the Line using its own locomotives and personnel. According to HC Railroad, since 2015, CSXT crews have “deliver[ed] 90-car unit trains of hopper cars in private carriage to (empty) and from (loaded) Morristown’s grain facility over the Line.” (Pet. 4.) HC Railroad states that the rates, terms, and conditions governing CSXT’s transportation of grain processed by Morristown are established between CSXT and its customers; Morristown does not have any rail transportation agreements or “tariff agreements” with CSXT to transport grain from its facility.

In addition to an exemption from the provisions of 49 U.S.C. § 10903, HC Railroad also seeks an exemption from the OFA procedures of 49 U.S.C. § 10904 and the public use conditions of 49 U.S.C. § 10905 as it intends to leave the track in place for continued access by its affiliate, Morristown, and to serve any hypothetical future industries by contract.

DISCUSSION AND CONCLUSIONS

Exemption from 49 U.S.C. § 10903. Under 49 U.S.C. § 10903, a rail line may not be abandoned without the Board’s prior approval. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from § 10903 or other provisions of Part A of Subtitle IV of Title 49 of the U.S. Code when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Here, detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP. HC Railroad states that no common carrier rail service has moved over the Line in more than five years and that Morristown, the only shipper, is satisfied to continue to lease the Line and maintain it for use in its grain operations.⁴ By minimizing the administrative expense of the application process, an exemption would expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. §§ 10101(2), (7), (15). Additionally, granting HC Railroad’s petition would encourage honest and efficient management and foster sound economic conditions. 49 U.S.C. §§ 10101(5) & (9). Other aspects of the RTP would not be adversely affected by use of the exemption process.

³ Contemporaneous with HC Railroad’s acquisition of the Line, HC Railroad’s indirect parent company, Bunge North America, Inc., acquired Morristown (via another subsidiary). (Pet. 2.)

⁴ HC Railroad provides a Verified Statement from Todd Bastean, the President of Morristown, confirming that Morristown has no objection to HC Railroad’s petition. (See Pet., Ex. C.)

We also find that regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power.⁵ As discussed earlier, the only shipper on the Line does not object to HC Railroad's petition.

Exemption from 49 U.S.C. § 10904. Under 49 U.S.C. § 10904, a financially responsible person may offer to purchase, or subsidize continued rail operation over, a rail line sought to be abandoned. The Board has granted exemptions from the OFA provisions of 49 U.S.C. § 10904 when the record shows that the right-of-way is needed for a valid public purpose and there is no overriding public need for continued freight rail service. See, e.g., Union Pac. R.R.—Aban. Exemption—in Adams, Weld, & Boulder Ctys., Colo., AB 33 (Sub-No. 307X), slip op. at 2-3 (STB served Oct. 18, 2012).

HC Railroad has not justified an exemption from the OFA process, as it has not demonstrated that the right-of-way is needed for a valid public purpose. Instead, HC Railroad argues that an exemption from the OFA process is justified because there is no need for common carrier rail service, there is no overhead traffic, regulation of the proposed abandonment is not necessary to protect shippers from an abuse of market power, and “abandonment of the common carrier obligation will facilitate private use of the track.” (Pet. 12.) While these arguments support the petition for exemption to abandon the line, they are not reasonable bases for departing from the statutory objective of providing an opportunity for preserving common carrier rail service as part of the abandonment process. Union Pac. R.R.—Aban. Exemption—in Pottawattamie Cty., Iowa, AB 33 (Sub-No. 300X), slip op. at 4 (STB served Jan. 20, 2012) (denying exemption from the OFA process because private use of a line is not a valid public purpose). HC Railroad notes that, in the past, the Board had exempted a proposed abandonment from the OFA procedures to facilitate private rail operations. CSX Transp., Inc.—Aban. Exemption—in Genesee Cty., Mich., AB 55 (Sub-No. 633X), slip op. at 3 (STB served July 25, 2007). More recently, however, the Board has denied such requests, determining that private use is not a valid public purpose and acknowledging 49 U.S.C. § 10904's “objective of providing an opportunity for maintaining common carrier rail service as part of the abandonment process.” Union Pac. R.R., AB 33 (Sub-No. 300X), slip op. at 4; see also, CSX Transp.—Aban. Exemption—in Chesterfield & Darlington Ctys., S.C., AB 55 (Sub-No. 703X), slip op. at 3 (STB served Jan 19, 2011) (denying requested exemption from the OFA process to facilitate sale of a line to the shipper for its private use). Accordingly, the Board will deny HC Railroad's request for an exemption from the OFA process. Nevertheless, given the apparent lack of need for the Line by any shipper other than Morristown, any person seeking to file an OFA must provide evidence that there is some shipper (other than Morristown) in need of common carrier service. Union Pac. R.R., AB 33 (Sub-No. 300X), slip op. at 4.

Exemption from 49 U.S.C. § 10905. HC Railroad also seeks exemption from the public use provisions of 49 U.S.C. § 10905. Because requests for a public use condition were due by April 24, 2017, and none were received, HC Railroad's request for exemption from § 10905 will

⁵ Because we find that regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed abandonment is limited in scope.

be denied as moot. See Union Pac. R.R.—Aban. of Freight Easement—in Adams Cty., Colo., AB 33 (Sub-No. 323X) (STB served Feb. 19, 2016).

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose on HC Railroad the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

Environmental and Historic Review. HC Railroad has submitted environmental and historic reports⁶ and has notified the appropriate federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. §§ 1105.7, 1105.8, 1105.11. The Board's Office of Environmental Analysis (OEA) examined the report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

In an Environmental Assessment (EA) issued on May 12, 2017, OEA concluded that, as proposed, the abandonment of the Line would not significantly affect the quality of the human environment and recommended that no environmental conditions be imposed on any decision granting abandonment authority.

Comments on the EA were due by June 12, 2017, and no comments were filed. OEA issued a Final EA on June 13, 2017, that does not recommend any environmental or historic preservation conditions. We agree with OEA's analysis and recommendations and will not impose environmental or historic preservation conditions.

This action will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by HC Railroad of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line.
2. HC Railroad's request for an exemption from the OFA procedures at 49 U.S.C. § 10904 is denied. Any OFA under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by June 30, 2017, subject to time extensions

⁶ HC Railroad submitted its reports—which are incorporated by reference—as part of its verified notice in a related proceeding. See HC Railroad, Verified Notice, Ex. 3, Jan. 23, 2017, HC R.R.—Aban. Exemption—in Rush Cty., Ind., AB 1250X. HC Railroad withdrew its verified notice in favor of filing the petition for exemption in this proceeding. HC R.R.—Aban. Exemption—in Rush Cty., Ind., AB 1250X (STB served Mar. 6, 2017).

authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1).⁷ Each OFA must be accompanied by the filing fee of \$1,700. See 49 C.F.R. § 1002.2(f)(25).

3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in boldface on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

4. Provided no OFA has been filed, this exemption will be effective on July 20, 2017.

5. HC Railroad’s request for exemption from the provisions of 49 U.S.C. § 10905 is denied as moot.

6. Petitions to reopen and petitions to stay must be filed by July 5, 2017.

7. Pursuant to 49 C.F.R. § 1152.29(e)(2), HC Railroad shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by HC Railroad’s filing of a notice of consummation by June 20, 2018, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the one-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Board Members Begeman, Elliott, and Miller.

⁷ Consistent with our precedent, and given the apparent lack of need for the Line by a shipper other than Morristown, any person seeking to file an OFA must provide evidence that there is another shipper that would make use of common carrier service. See, e.g., CSX Transp., Inc.—Aban. Exemption—in Wash. Cty., Md., AB 55 (Sub-No. 727X), slip op. at 4 n.8 (STB served Oct. 24, 2013); Union Pac. R.R., AB 33 (Sub-No. 300X), slip op. at 4; CSX Transp., AB 55 (Sub-No. 703X), slip op. at 3.